M. MUTHUCUMARU & ORS.

v.

TUN V.T. SAMBANTHAN & ORS.

HIGH COURT MALAYA, KUALA LUMPUR
MOHD. AZMI J
[CIVIL SUIT NO. 1203 OF 1976]
10 OCTOBER 1981

ADMINISTRATIVE LAW: *Dispute regarding legality of annual general meeting already referred to the Registrar of Societies - Whether writ of summons filed in High Court concerning above dispute and forward sale dispute a nullity for want of jurisdiction.*

This was an application by summons-in-chambers for an order that the writ of summons filed by the respondents/plaintiffs on 1 June 1976, be set aside as a nullity for want of jurisdiction. The respondents/plaintiffs were seeking various declarations and orders that the convening, the proceedings and the purported election of some of the defendants as members of the board of directors of National Land Finance Co-operative Society Ltd. ("NLFCS") were unconstitutional, illegal and null and void. The respondents were also seeking remedies in reference to certain contracts of forward sales allegedly carried out by the first defendant in contravention of NLFCS constitution, and also to misapplication of funds and breach of trust by him and/or the board of directors of NLFCS. They also claimed refund of various sums from first defendant and the board of directors.

The respondent argued that the High Court had in addition to its supervisory jurisdiction, concurrent jurisdiction with the Registrar to determine the disputes because (a) the declarations and orders sought were beyond the scope of the Registrar's power under the Co-operative Societies Ordinance No. 33 of 1948 (the "Ordinance") and (b) the first defendant was not a member of NLFCS and therefore the Registrar had no jurisdiction over him. It was also argued that the Registrar had acted *mala fide* by causing delay in the reference of the disputes to arbitration.

On the other hand, the applicants/defendants contended that the proceeding before the High Court was premature and that the writ should be set aside as the election dispute has been referred by the first plaintiff to the Registrar, who, in turn, had referred it for arbitration under s. 49(2) (b) of the Ordinance. In support of the contention, they cited a number of Indian cases to show that both the election issue and the forward sale issue were disputes touching the business of NLFCS and, as such, the jurisdiction of Civil Court was excluded and by virtue of s. 49(2) only the Registrar had jurisdiction. The by-laws of NLFCS also provide that any dispute touching the business of the society specified in the Ordinance shall be referred to the Registrar. The Registrar could either decide the dispute himself, or refer it for disposal by arbitration, or alternatively require the parties to refer it to the Court under s. 49(2) (c), or refer it to the High Court by way of case stated on question of law under s. 50. The Court had no original jurisdiction. Any person aggrieved by the award of the arbitrator could appeal to the Registrar under s. 49(3), but any decision of the Registrar whether under s. 49(2) or s. 49(3) was final and cannot be questioned in any Civil Court. It was further contended by the applicants that when a Court had created a special tribunal to settle disputes, the law should not be construed to defeat that purpose and that if the Registrar refused to take any of the three alternative steps as provided under s. 49(2), the remedy of the respondents would be in *mandamus*.

The issue before the Court was, therefore, whether by virtue of s. 49 of the Ordinance the suit was maintainable in the High Court on the ground that it had no jurisdiction to hear the case until and unless the matter was referred to it by the parties at the request of the registrar under s. 49(2) (c) of the Ordinance, that is, whether the jurisdiction of the Court was excluded or whether it had original concurrent jurisdiction with the Registrar.

Relying on *Madhava Rao v. Surya Rao* [1954] 1 AIR Madras 103 and other Indian cases, the applicants contended that the words "touching the business of a registered society" in relation to disputes should be construed widely, that the word "touching" indicates that the dispute need not arise directly out of the business of the society, so long as it had reference to the business of the society and that the word "business" should not be construed in a narrow sense. It was submitted that a dispute relating to election was a dispute concerning or relating to the business of the society, and that where the election was impugned under s. 49(1) by one or more members, the Registrar acting under s. 49(2) could set aside the election on the ground of irregularities or illegalities not only in the convening and conduct of the meeting but also in the purported election.

Held:

[1] If a society's business in *ultra vires*, or if the legality or constitutionality of the society's business is challenged, then it is not a "dispute touching the business of a registered society" within the ambit of s. 49(1) and the Court has jurisdiction. To hold otherwise would deprive the members, the committee and the society itself of declaratory remedies which are beyond the scope and powers of the Registrar or arbitrators appointed by the Registrar.

If the word "business" was intended to be all-embracing without restriction, then the words "any business" would have been used by the legislature. Further, the deeming provision in s. 49(1) on the meaning of "dispute touching the business of the society" clearly showed that the legislature did not intend the words to be of unlimited scope.

In the case of *Madhava Rao* it was in fact held that, if the question raised related to the "*ultra vires*" nature of the rule or by-law, a dispute of that nature is undoubtedly outside the purview of the tribunal. *Himangshu Bhusan v. Nirmal Kumar* [1962] AIR Calcutta 488 at p. 489; *Hara Dayal v. Chandpur Bank* [1938] AIR Calcutta 394; *Deccan Merchants Co-operative Bank Ltd. v. Dalichand Jugraj Jain & Ors.* [1969] SC 1320 considered and followed. *Dharam Chand v. Ladu Ram & Ors.* [1956] AIR Ajmer 63 distinguished.

[2] In other disputes, other than those covered by s. 49(1) of the Ordinance, the Registrar should direct the parties concerned to refer them to the Civil Court. Even if the parties do not first refer the matter to the Registrar, or even if the matter has already been referred to the Registrar, jurisdiction of the High Court is not excluded.

[3] Both the election dispute and the forward sale dispute concerned the validity of the society's business, and as they were not "disputes touching the business" of NLFCS within the ambit of s. 49(1), the Court's jurisdiction was not excluded by s. 49 and s. 50. At the very least, the Court had concurrent original jurisdiction with the Registrar having regard to the nature of both the disputes. As far as declarations were concerned, however, the remedies sought were definitely maintainable in the High Court.

[4] The first defendant, though a president of NLFCS, was not a member of it. As such, the Registrar has no jurisdiction over him. [*Haridasi Ghosh v. Motihari Town Co-operative Society* [1934] AIR Patna 145].

[Appeal dismissed with costs.]

Cases referred to:

Madhava Rao v. Surya Rao [1954] 1 AIR Madras 103
Himangshu Bhusan v. Nirmal Kumar [1962] AIR Calcutta 488
Hara Dayal v. Chandpur Bank [1938] AIR Calcutta 394
Deccan Merchants Co-operative Bank Ltd. v. Dalichand Jugraj Jain & Ors. [1969] SC 1320
Dharam Chand v. Ladu Ram & Ors. [1956] AIR Ajmer 63
Sun Man Tobacco Co. Ltd. v. Governor of Malaysia [1976] 2 MLJ 163
Ramendra Nath v. Balurghat C.C. Bank [1932] AIR Cal 317
Belahri Co-operative Society v. Puttu Lal & Ors. [1941] AIR Oudh 315
Co-operative Central Bank v. Industrial Tribunal [1970] AIR SC 245
Dhulabhai v. State of M.P. [1969] SC 78
Pye Granite Co. Ltd. v. Ministry of Housing & Local Government & Ors. [1960] AC 260
Ealing London Borough Council v. Race Relations Board [1972] AC 342

Legislation referred to:

Co-operative Societies Ordinance 1948, ss. 49, (2), (2)(b), (c), (3), 50

For the plaintiffs/respondents - G. Vadiveloo
For the 1st, 4th, 7th, 8th, 12th, 16th, 18th & 19th defendants - James Puthucheary
For the 2nd, 3rd, 5th & 6th defendants - M. Sivalingam

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Also found at [1982] CLJ 115